

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Video Description: Implementation of the	)	MB Docket No.: 11-43
Twenty-First Century Communications and	)	
Video Accessibility Act of 2010	)	

**COMMENTS OF THE  
WGBH NATIONAL CENTER FOR ACCESSIBLE MEDIA**

**I. INTRODUCTION**

The WGBH National Center for Accessible Media provides these comments in response to the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking ("NPRM") on video description requirements (MB Docket No. 11-43) as directed by the "21st Century Communications and Video Accessibility Act"<sup>1</sup> ("CVAA").

The WGBH Educational Foundation is one of the country's leading public broadcasters and has long considered one of its central missions to be increasing access to media for people with disabilities. In 1971, WGBH established The Caption Center, the world's first captioning agency, to produce captions for TV programs so that deaf and hard-of-hearing viewers could gain equal access to those programs. Today, WGBH has more than 75 employees in offices on both coasts and produces captions for every facet and platform of the media world.

In 1990, WGBH launched Descriptive Video Service® (DVS®) to provide access to TV programs and home media for people who are blind or visually impaired and, in 2001, combined The Caption Center and DVS to form the WGBH Media Access Group. Today, the Media Access Group provides description for such PBS programs as *Masterpiece Mystery!*, *The American Experience*, *Nova*, *Arthur* and dozens of other children's programs; for CBS programs such as *NCIS* and *CSI*; for Fox's *The Simpsons*; and for hundreds of top movie releases in theaters and on DVD.

In 1993, with the support of the Corporation for Public Broadcasting, WGBH established the National Center for Accessible Media (NCAM) as an R&D facility designed to extend WGBH's previous media access efforts into new media and to further the uses of captioning and descriptive video in the home, classroom, workplace, and community. New venues for NCAM's inclusive R&D efforts include museums, theme parks, online media, mobile devices, in-flight entertainment, online learning, e-books and many other technologies and media.

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<sup>1</sup> Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010).

## II. BACKGROUND

Video description provides descriptive narration of key visual elements; it is a program enhancement which is scripted, then voiced professionally and mixed into the natural pauses in dialogue to help viewers who are blind or who have low vision better understand the information or narrative of any form of media. Key visual elements are those which viewers with vision loss would ordinarily miss and include actions, costumes, gestures, facial expressions, scene changes, and onscreen text. Descriptions are accessed on TV programs via the ancillary audio capability built into the digital TV standard, whether delivered via broadcast, cable or satellite. Other forms of media provide the enhanced audio via techniques appropriate for that media.

## III. DISCUSSION

### A. Identifying Stations Required to Provide Video Description

#### 1. Market rankings.

The FCC, as directed by the CVAA, must “update the list of the top 25 designated market areas.”<sup>2</sup> It proposes to do so by referencing the top 25 markets as determined by Nielsen as of January 1, 2011 (*i.e.*, the 2010-2011 DMA rankings), and, within those markets, to require stations affiliated with ABC, CBS, Fox, or NBC to provide video description under the new rules, regardless of when the affiliation begins. This approach appears fair and is in line with the precedent set by the FCC's original video description rules of July of 2000<sup>3</sup>.

The FCC notes in the present NPRM that relative size of markets often changes over time but that these changes will rarely effect the provision of described programming for two reasons: 1) that described programming is usually provided by the governing broadcast or cable network, and 2) that the “pass-through” obligations which apply to all stations will ensure that stations in the top 25 markets and below will all be providing that described programming to their viewers.

We agree that the availability of described programming should vary little market-to-market based on the pass-through requirements, but note that if and when exemptions to the pass-through rules are enacted, the importance of the designation of the top 25 (and, eventually, top 60 markets) will become a key determination of which viewers in which markets have assured access to described programming.

We recommend that the FCC should periodically reconsider its rankings, perhaps on a five-year timetable, but should firmly establish a “no backsliding” rule to assure that once a DMA has been subject to the top 25 or top 60 rule, broadcasters in that area will continue to provide described programs as they have done so during the previous five-year period. Stations in DMAs that slip below the top 25 or top 60 markets should not have a problem maintaining their minimum requirements as they would have been providing the service for an extended period, have been equipped to do so, and have maintained its affiliate relationship with one of the four covered networks.

#### 2. Phase two timeline.

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<sup>2</sup> CVAA, Title II, sec. 202(a), § 713(f)(2)(B).

<sup>3</sup> *Implementation of Video Description of Video Programming*, MM Docket No. 99-339, Report and Order, 15 FCC Rcd 15230 (2000) (“*2000 Report and Order*”), recon. granted in part and denied in part, 16 FCC Rcd 1251 (2001)

The FCC seeks comment as to whether it should identify a date in the Report & Order resulting from this NPRM for extending the video description requirements to the top 60 markets (after filing the requisite report to Congress).

We agree that the FCC should set a date at this time for the next phase of video description so as to assure that all parties are aware of the pending requirements. If Congress decides, after receiving the designated report, that it desires to alter the roll-out schedule, that action would supercede the FCC's anticipated expansion of markets.

## **B. Top Five National Nonbroadcast Networks**

### **1. Periodic rankings of nonbroadcast networks.**

The FCC seeks comment on periodic review of the rankings of the top 5 non-broadcast networks. We agree that these rankings should be revisited, perhaps on a two-year timeline (these rankings change much more frequently than changes in the rankings of top 25 DMAs) and should be accompanied by rules which assure continued provision of video described programming by networks which fall out of the top 5, either for a designated period of time (such as one year after such a change in ranking) or, via a non-backsliding rule, for even a longer period of time. This will ensure that the FCC can accomplish its goal of providing "adequate advance notice regarding which networks will be subject to the rules, and to avoid undue disruption for audiences who will come to rely upon video described programming."

## **C. Pass-Through of Video Described Programming**

### **1. Pass-through for all.**

We agree with the FCC's intention of reinstating the original pass-through requirements which applied to all MVPDs and network-affiliated broadcast stations (including non-commercial stations), rather than a subset of large-market entities,<sup>4</sup> and which require that those broadcast stations and MVPDs that are obliged to provide 50 hours of description must continue to pass through any video description that they receive even after they have provided the 50 required hours of description.

### **2. Other program-related services exception.**

We agree that the previous exceptions provided for stations carrying other program-related audio services are no longer relevant in the digital television system, that multiple audio services can be provided simultaneously.

### **3. "Technical capability."**

The FCC seeks comment on the costs of passing through one or more program-related audio services. Reliable information on these costs is best provided by the manufacturers of the digital equipment necessary for encoding DTV audio tracks and need to take into account the costs of adding the necessary metadata for proper handling of one or more additional program-related audio services as well as the cost of recording and routing multiple audio services within a broadcast operations center. Broadcasters too would report that these costs vary, depending on such factors as when the plant was last upgraded, when it transitioned to digital signal distribution, how old their distribution plant is and whether they are already set up to handle

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<sup>4</sup> 2000 Report and Order, *supra* note 2, at ¶ 30.

multi-channel audio recording from their network and send it around their facility. According to WGBH engineers, these contingencies mean that such costs can range from \$0 to many thousands of dollars.

#### **D. Phase-In**

##### **1. Timelines.**

We agree with the FCC's proposed schedule for adopting and publishing modified rules (before October 8, 2011 - contingent on OMB review) and for commencement of provision of the designated quantity of hours on the networks and in the markets determined by its rules (January 1, 2012). As a provider of video description services with 20 years of production experience with top programming networks, WGBH's Media Access Group will be able to comfortably accommodate any or all of the increased amount of description needed to meet these requirements. We also agree that broadcasters and MVPDs should comply with the pass-through requirement as of January 1, 2012, unless there is a showing that compliance would be economically burdensome as discussed in the FCC's NPRM.

#### **E. Exemptions**

##### **1. Live or Near-Live Programming.**

The FCC seeks comment on a definition of "near-live" programming which would be exempt from the video description rules. We agree that there is no widely accepted definition of "near-live" programming but agree that a common-sense definition would be the one the FCC proposes: "programming performed and recorded less than 24 hours prior to the time it is first aired." With access to advance materials and with notice that such programming is planned to be described, the WGBH Media Access Group is been able to turn around description for a one-hour program in less than 24 hours, performing the entire process from scripting to editing to narrating to mixing to lay-down of tracks.

In addition, the greater-than-24-hour window should apply to programs that are complete, with no further edits during the 24-hour time period, i.e., not "substantially completed" but in fact "locked," "in the can," delivered to the network with no further changes possible. The complexities of changing description within that 24-hour window and the subsequent rescripting, revoicing, remixing and reinsertion argue for only complete and final programs to be covered by the video description rules; all others would be exempt.

##### **2. Future cost savings.**

Changes in technology and production processes in the future could lessen the need for this exemption and the FCC should be open to the possibility of revisiting this definition eventually.

##### **3. Costs of producing video description.**

The FCC seeks comment on the anticipated ongoing costs, per program or hour described. Though there are variables in the production process that need to be considered (turnaround time, nature of the programming, volume of the programming, and other factors), a reliable estimate would be between \$2,000 and \$4,000 per program hour for the complete description process from scripting to narration to mixing to lay-down of tracks on the program master. Other costs incurred by the program producer or distributed would be in addition to this estimate.

## **F. Digital Format**

Due to the completion of the digital television transition in the U.S., we agree with the FCC's proposal to extend the reinstated rules to cover all video programming, including that transmitted for display on television in digital format.

## **G. Other Issues**

### **1. Quality Standards.**

The FCC is right to raise the question of quality standards when contemplating its new video description rules. The history of its closed captioning requirements points to the unfortunate situation that, absent a firm FCC requirement for caption quality, the accuracy, timing, stylistic approaches, and overall usefulness of closed captioning has fallen dramatically over the past decade.

The FCC has a number of video description best practices to rely upon for crafting a quality standard for its new rules and without such guidance from the FCC, description quality is in fact likely to decline. The cited, objective, examples from the present NPRM are valuable parameters to consider:

- video description should not conflict with dialogue or other important audio in the program.
- video description should be synchronous with the action it is describing, interweaving it whenever possible in-between dialog, or as near as possible to the point in time when the described images are on-screen.
- video description should be written by experienced practitioners with knowledge of the basics of the craft and the needs of blind and visually impaired people.

Samples of available best practices documents include:

- the "Description Key"<sup>5</sup> from the Described and Captioned Media Program, which was thoroughly vetted by educators, producers, consumers and description providers.
- the Audio Description Coalition's Standards for Audio Description and Code of Professional Conduct for Describers<sup>6</sup>
- Effective Practices for Description of Science Content within Digital Talking Books<sup>7</sup>

### **2. Publicizing Program Selection.**

As in the early days of closed captioning when only a handful of programs were captioned, reliable means of finding out when and where those newly accessible programs were available was a very important service. TV guides of all kinds marked their programs with letters (CC), a symbol, or icon became common practice as was a visual and audible indicator at the beginning of the captioned program.

Similarly, as the volume of described programs begins to increase, regulated entities should use every appropriate communication method to inform the description-using community

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<sup>5</sup> <http://www.dcmp.org/ai/descriptionkey/index.html>

<sup>6</sup> <http://www.audiodescriptioncoalition.org/aboutstandards.htm>

<sup>7</sup> [http://ncam.wgbh.org/experience\\_learn/educational\\_media/stemdx](http://ncam.wgbh.org/experience_learn/educational_media/stemdx)

as to the availability of accessible programs. Methods should include use of letters or symbols<sup>8</sup> in physical and electronic guides, online and on-screen, and through the distribution of described program information to organizations which serve people who are blind or visually impaired and on widespread social media venues.

### 3. Costs and benefits of description vis a vis different types or formats of programs.

There is generally no cost difference for producing descriptions for various types of programs, such as documentaries, dramas or children's programs - length of program and turnaround time are the governing factors when determining costs. The benefits of description vary according to the user - certainly blind and visually impaired children benefit significantly from description of the range of programs presently described on PBS. Blind and visually impaired adults may prefer and find useful description of dramas or information programs or movies or comedies. The variation in usefulness and benefit varies among the population of description users as much as it does among the sighted community.

### 4. Updated A/53 Standard.

The FCC seeks comment on the updated ATSC audio standard as it applies to video description. It is true that in the early days of development of the DTV standard, the notion that a separate description track could be transmitted separately from the main program audio and then mixed together in the TV set or set-top box was an attractive proposition. Implementation of such an engineering standard could have had meaningful technical and financial benefits. Unfortunately a number of factors made this innovative proposition unfeasible and was never implemented.

In an *ex parte* presentation on April 19, 2011, and its subsequent filing to the FCC on April 20, 2011, Dolby described a method whereby the mixing component of the video description process would be handled automatically in the end-user's reception device, thus eliminating the time and expense taken up in the mix process. This innovation, which could also result in higher-quality audio and bandwidth savings, would only be possible if EVERY possible reception device incorporated the "in-box" mixing technology and two digital audio decoders existed in all receivers instead of the present practice of just one. Until such time as the receiver-mix enabling technology would be pervasively available, description producers would still need to create a mixed version of the program for those consumers whose home equipment didn't incorporate this innovation. In addition, bandwidth usage would actually be increased due to the need to distribute both mixed and unmixed video description tracks for each program.

Thus, we agree with the FCC's decision to update its rules to incorporate A/53 Part 5: 2010 in order to ensure that video description can be received by all DTV receivers.

### 5. Children's Programming.

We agree with the FCC's proposal to define children's programming as that content directed at children 16 years of age and under based on the stated benefits of the service to a wide range of blind and visually impaired children.

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<sup>8</sup> WGBH has released into the public domain its previously trademarked symbol for indicating a program is described. That symbol is available here: <http://main.wgbh.org/wgbh/hire/symbols.html>

## **H. Summary**

During the time that the previous requirements for video description were in place (April to November 2002), a significant amount of programming was successfully described and distributed. The video description-producing community has matured and grown since that time, best practices have been crafted, training of production staff has become more widely available and description has become more common in movie theaters and on DVDs. And while digital technology has changed much of the technical distribution infrastructure since the analog system of that time, in some ways DTV has improved the ability to embed alternate audio tracks and assure reception by consumers. Television industry efforts to come to a common understanding about proper tagging of ancillary audio have been progressing over the past five years and have resulted in a consensus document that will clarify the final issues that needed to be resolved for assuring pass-through.<sup>9</sup>

With these advances over the past decade, and with the mandates put in place by the CVAA, we are confident that the FCC's proposed timeline and implementation parameters can be successfully achieved by the description-producing and television industries working together as they have been since 1990. We look forward to being better able to serve the blind and visually impaired community as these rules are enacted.

Sincerely,

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<sup>9</sup> CEA-CEB21, Recommended Practice for Selection and Presentation of DTV Audio